

Senate Study Bill 1060 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
PUBLIC HEALTH BILL)

A BILL FOR

1 An Act relating to health information technology including
2 the creation of a statewide health information exchange,
3 providing for fees, and including effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 135D.1 Findings and intent.

2 1. The general assembly finds all of the following:

3 a. Technology used to support health-related functions is
4 widely known as health information technology. Electronic
5 health records are used to collect and store relevant patient
6 health information. Electronic health records serve as a means
7 of bringing evidence-based knowledge resources and patient
8 information to the point of care to support better decision
9 making and more efficient care processes.

10 b. Health information technology allows for comprehensive
11 management of health information and its secure electronic
12 exchange between providers, public health agencies, payers,
13 and consumers. Broad use of health information technology
14 should improve health care quality and the overall health of
15 the population, increase efficiencies in administrative health
16 care, reduce unnecessary health care costs, and help prevent
17 medical errors.

18 c. Health information technology provides a mechanism to
19 transform the delivery of health and medical care in Iowa and
20 across the nation.

21 2. It is the intent of the general assembly to use health
22 information technology as a catalyst to achieve a healthier
23 Iowa through the electronic sharing of health information. A
24 health information exchange involves sharing health information
25 across the boundaries of individual practice and institutional
26 health settings and with consumers. The result is a public
27 good that will contribute to improved clinical outcomes and
28 patient safety, population health, access to and quality of
29 health care, and efficiency in health care delivery.

30 Sec. 2. NEW SECTION. 135D.2 Definitions.

31 For the purposes of this chapter, unless the context
32 otherwise requires:

33 1. "Authorized" means having met the requirements as a
34 participant for access to the health information exchange.

35 2. "Board" means the board of directors of Iowa e-health.

1 3. "*Consumers*" means people who acquire and use goods and
2 services for personal need.

3 4. "*Continuity of care document*" means a summary of a
4 patient's health information for each visit to a provider to be
5 delivered through the health information exchange.

6 5. "*Department*" means the department of public health.

7 6. "*Deputy director*" means the deputy director of public
8 health.

9 7. "*Director*" means the director of public health.

10 8. "*Exchange*" means the authorized electronic sharing
11 of health information between providers, payers, consumers,
12 local boards of health, the department, and other authorized
13 participants utilizing the health information exchange and
14 health information exchange services.

15 9. "*Executive director*" means the executive director of the
16 office of health information technology.

17 10. "*Health information*" means any information, in any
18 form or medium, that is created, transmitted, or received
19 by a provider, payer, consumer, local board of health, the
20 department, or other authorized participant, which relates
21 to the past, present, or future physical or mental health or
22 condition of an individual; the provision of health care to an
23 individual; or the past, present, or future payment for the
24 provision of health care to an individual.

25 11. "*Health information exchange*" means the exclusive
26 statewide electronic health information exchange.

27 12. "*Health information exchange services*" means the
28 exchanging of health information via the health information
29 exchange; education and outreach to support connection and
30 access to and use of the health information exchange; and all
31 other activities related to the electronic exchange of health
32 information.

33 13. "*Health Insurance Portability and Accountability*
34 *Act*" means the federal Health Insurance Portability and
35 Accountability Act of 1996, Pub. L. No. 104-191, including

1 amendments thereto and regulations promulgated thereunder.

2 14. *"Infrastructure"* means technology including
3 architecture, hardware, software, networks, terminology and
4 standards, and policies and procedures governing the electronic
5 exchange of health information.

6 15. *"Iowa e-health"* means the collaboration between the
7 department and other public and private stakeholders to
8 establish, operate, and sustain an exclusive statewide health
9 information exchange.

10 16. *"Iowa Medicaid enterprise"* means Iowa medicaid
11 enterprise as defined in section 249J.3.

12 17. *"Local board of health"* means a county or district board
13 of health.

14 18. *"Office"* means the office of health information
15 technology within the department.

16 19. *"Participant"* means an authorized provider, payer,
17 patient, local board of health, the department, or other
18 authorized person that has agreed to authorize, submit, access,
19 and disclose health information through the health information
20 exchange in accordance with this chapter and all applicable
21 laws, rules, agreements, policies, and procedures.

22 20. *"Participation and data sharing agreement"* means
23 the agreement outlining the terms of access and use for
24 participation in the health information exchange.

25 21. *"Patient"* means a person who has received or is
26 receiving health services from a provider.

27 22. *"Payer"* means a person who makes payments for health
28 services, including but not limited to an insurance company,
29 self-insured employer, government program, individual, or other
30 purchaser that makes such payments.

31 23. *"Protected health information"* means individually
32 identifiable information, including demographic information,
33 related to the past, present, or future health or condition
34 of a person; the provision of health care to a person; or the
35 past, present, or future payment for such health care; which is

1 created, transmitted, or received by a participant. "Protected
2 health information" does not include education and other records
3 that are covered under the federal Family Educational Rights
4 and Privacy Act of 1974, as codified at 20 U.S.C. 1232g, as
5 amended; or any employment records maintained by a covered
6 entity, as defined under the Health Insurance Portability and
7 Accountability Act, in its role as an employer.

8 24. "Provider" means a hospital, physician clinic, pharmacy,
9 laboratory, health service provider, or other person that is
10 licensed, certified, or otherwise authorized or permitted
11 by law to administer health care in the ordinary course of
12 business or in the practice of a profession, or any other
13 person or organization that furnishes, bills, or is paid for
14 health care in the normal course of business.

15 25. "Purchaser" means any individual, employer, or
16 organization that purchases health insurance or services and
17 includes intermediaries.

18 26. "Vendor" means a person or organization that provides
19 or proposes to provide goods or services to the department
20 pursuant to a contract, but does not include an employee of the
21 state, a retailer, or a state agency or instrumentality.

22 Sec. 3. NEW SECTION. 135D.3 Iowa e-health established —
23 **guiding principles, goals, domains.**

24 1. Iowa e-health is established as a public-private,
25 multi-stakeholder collaborative. The purpose of Iowa e-health
26 is to develop, administer, and sustain the health information
27 exchange to improve the quality, safety, and efficiency of
28 health care available to Iowans.

29 2. Iowa e-health shall manage and operate the health
30 information exchange. Nothing in this chapter shall be
31 interpreted to impede or preclude the formation and operation
32 of regional, population-specific, or local health information
33 exchanges or their participation in the health information
34 exchange.

35 3. Iowa e-health shall facilitate the exchange of health

1 information for prevention and treatment purposes to help
2 providers make the best health care decisions for patients and
3 to provide patients with continuity of care regardless of the
4 provider the patient visits.

5 4. The guiding principles of Iowa e-health include all of
6 the following:

- 7 a. To engage in a collaborative, public-private,
8 multi-stakeholder effort including providers, payers,
9 purchasers, governmental entities, educational institutions,
10 and consumers.
- 11 b. To create a sustainable health information exchange which
12 makes information available when and where it is needed.
- 13 c. To ensure the health information exchange incorporates
14 provider priorities and appropriate participant education.
- 15 d. To instill confidence in consumers that their health
16 information is secure, private, and accessed appropriately.
- 17 e. To build on smart practices and align with federal
18 standards to ensure interoperability within and beyond the
19 state.

20 5. The goals of Iowa e-health include all of the following:

- 21 a. To build awareness and trust of health information
22 technology through communication and outreach to providers and
23 consumers.
- 24 b. To safeguard privacy and security of health information
25 shared electronically between participants through the health
26 information exchange so that the health information is secure,
27 private, and accessed only by authorized individuals and
28 entities.
- 29 c. To promote statewide deployment and use of electronic
30 health records.
- 31 d. To enable the electronic exchange of health information.
- 32 e. To advance coordination of activities across state and
33 federal governments.
- 34 f. To establish a governance model for the health
35 information exchange.

1 *g.* To establish sustainable business and technical
2 operations for the health information exchange.

3 *h.* To secure financial resources to develop and sustain the
4 health information exchange.

5 *i.* To monitor and evaluate health information technology
6 progress and outcomes.

7 6. Iowa e-health shall include the following five domains:

8 *a. Governance.* Iowa e-health shall be governed by a board
9 of directors whose members represent stakeholders such as
10 provider organizations and associations, providers, payers,
11 purchasers, governmental entities, business, and consumers.
12 Iowa e-health shall be supported by the department's office of
13 health information technology. The board shall set direction,
14 goals, and policies for Iowa e-health and provide oversight of
15 the business and technical operations of the health information
16 exchange and health information exchange services.

17 *b. Business and technical operations.* The office of health
18 information technology shall perform day-to-day operations
19 to support and advance Iowa e-health, the health information
20 exchange, and health information exchange services.

21 *c. Finance.* Iowa e-health shall identify and manage
22 financial resources to achieve short-term and long-term
23 sustainability of the health information exchange, so that the
24 health information exchange is financed by all who benefit
25 from the improved quality, efficiency, and other benefits that
26 result from the use of health information technology.

27 *d. Technical infrastructure.* Iowa e-health shall implement
28 and manage the core infrastructure and standards to enable the
29 safe and secure delivery of health information to providers and
30 consumers through the health information exchange.

31 *e. Legal and policy.* Iowa e-health shall establish privacy
32 and security policies and guidelines, and participation and
33 data sharing agreements, to protect consumers and enforce rules
34 for utilization of the health information exchange.

35 Sec. 4. NEW SECTION. 135D.4 **Governance — board of**

1 **directors — advisory council.**

2 1. Iowa e-health shall be governed by a board of directors.
3 Board members shall be residents of the state of Iowa.
4 Notwithstanding sections 69.16 and 69.16A, the persons
5 specified to appoint or designate board members shall consider
6 gender balance and geographic representation in the appointment
7 process.

8 2. The board of directors shall be comprised of the
9 following voting members:

10 *a.* Three members appointed by the governor subject to
11 confirmation by the senate, with one member representing
12 consumers, one member representing small business interests,
13 and one member representing large business interests.

14 *b.* Four members who are the chief information officer, or a
15 designee, of each of the four largest health care systems in
16 the state.

17 *c.* One member who represents rural hospitals and is a
18 member of the Iowa hospital association, designated by the Iowa
19 hospital association.

20 *d.* Two members who represent two different private health
21 insurance carriers, designated by the federation of Iowa
22 insurers, one of which has the largest health market share in
23 Iowa.

24 *e.* One member representing the department who is the deputy
25 director.

26 *f.* One member representing the Iowa Medicaid enterprise who
27 is the Iowa Medicaid director or the director's designee.

28 *g.* One member who is a licensed practicing physician in
29 an office or clinic setting, designated by the Iowa medical
30 society.

31 *h.* One member who is a licensed practicing physician in an
32 office or clinic setting, designated by the Iowa osteopathic
33 medical association.

34 *i.* One member who is a licensed practicing nurse in an
35 office or clinic setting, designated by the Iowa nurses

1 association.

2 *j.* One member who is a licensed pharmacist practicing in a
3 pharmacy setting, designated by the Iowa pharmacy association.

4 *k.* One member representing the Iowa collaborative safety net
5 provider network created in section 135.153, designated by the
6 network.

7 *l.* One member representing substance abuse and mental health
8 programs, designated by the Iowa behavioral health association.

9 *m.* One at-large board member, who may be appointed by and at
10 the sole discretion of the board.

11 3. A person shall not serve on the board in any capacity if
12 the person is required to register as a lobbyist under section
13 68B.36 because of the person's activities for compensation
14 on behalf of a profession or an entity that is engaged in
15 providing health care, reviewing or analyzing health care,
16 paying for health care services or procedures, or providing
17 health information technology or health information exchange
18 services.

19 4. *a.* Board members shall serve four-year terms but shall
20 not serve more than two consecutive four-year terms. However,
21 the board members who are the four chief information officers
22 of the four largest health care systems in the state and those
23 representing state agencies are not subject to term limits.

24 *b.* At the end of any term, a member of the board may
25 continue to serve until the appointing or designating authority
26 names a successor.

27 *c.* A vacancy on the board shall be filled for the remainder
28 of the term in the manner of the original appointment. A
29 vacancy in the membership of the board shall not impair the
30 right of the remaining members to exercise all the powers and
31 perform all the duties of the board.

32 *d.* A board member may be removed by the board for cause
33 including but not limited to malfeasance in office, failure
34 to attend board meetings, misconduct, or violation of ethical
35 rules and standards. Nonattendance of board members appointed

1 by the governor shall be governed by the provisions of section
2 69.15. A board member may be removed by a vote of the board if,
3 based on the criteria provided in section 69.15, subsection 1,
4 paragraphs "a" and "b", the board member would be deemed to have
5 submitted a resignation from the board.

6 e. The board members shall elect a chairperson from
7 their membership. The deputy director shall serve as vice
8 chairperson.

9 5. Meetings of the board shall be governed by the provisions
10 of chapter 21.

11 a. The board shall meet upon the call of the chairperson
12 or the vice chairperson. Notice of the time and place of each
13 board meeting shall be given to each member. The board shall
14 keep accurate and complete records of all of its meetings.

15 b. A simple majority of the members shall constitute a
16 quorum to enable the transaction of any business and for the
17 exercise of any power or function of the board. Action may be
18 taken and motions and resolutions adopted by the affirmative
19 vote of a majority of the members attending the meeting whether
20 in person, by telephone, web conference, or other means. A
21 board member shall not vote by proxy or through a delegate.

22 c. All board members shall be entitled to reimbursement
23 for actual and necessary expenses incurred in the performance
24 of their official duties as members in accordance with state
25 rules and guidelines. A person who serves as a member of the
26 board shall not by reason of such membership be entitled to
27 membership in the Iowa public employees' retirement system or
28 service credit for any public retirement system.

29 6. The board may exercise its powers, duties, and functions
30 as prescribed by law, independently of the director except in
31 matters involving violation or risk of violation of applicable
32 state or federal laws and regulations; overriding public policy
33 or public safety concerns; or compliance with the office of the
34 national coordinator for health information technology state
35 health information exchange cooperative agreement program or

1 any other cooperative agreement programs or grants supporting
2 Iowa e-health. The board has all powers incidental or
3 necessary to accomplish the purposes of this chapter and shall
4 do all of the following:

5 *a.* Participate in the selection of the executive director
6 and assist in the development of performance standards and
7 evaluations of the executive director.

8 *b.* Establish priorities among health information exchange
9 services based on the needs of the population of this state.

10 *c.* Establish by rule any fees, charges, costs, or expenses
11 that may be collected as the board deems necessary to operate,
12 maintain, support, and sustain the health information exchange
13 and health information exchange services.

14 *d.* Oversee the handling and accounting of assets and moneys
15 received for or generated by the health information exchange.

16 *e.* Establish committees and workgroups as needed.

17 *f.* Review and approve or disapprove all of the following,
18 as proposed by the department:

19 (1) Strategic, operational, and financial sustainability
20 plans for Iowa e-health, the health information exchange, and
21 health information exchange services.

22 (2) Standards, requirements, policies, and procedures for
23 access, use, secondary use, and privacy and security of health
24 information exchanged through the health information exchange,
25 consistent with applicable federal and state standards and
26 laws.

27 (3) Policies and procedures for administering the
28 infrastructure, technology, and associated professional
29 services necessary for the business and technical operation of
30 the health information exchange and health information exchange
31 services.

32 (4) Policies and procedures for evaluation of the health
33 information exchange and health information exchange services.

34 (5) Mechanisms for periodic review and update of policies
35 and procedures.

1 (6) An annual budget and fiscal report for the operations of
2 the health information exchange and an annual report for Iowa
3 e-health and health information exchange services.

4 (7) Major purchases of goods and services.

5 *g.* Adopt administrative rules pursuant to chapter 17A
6 to implement this chapter and relating to the management
7 and operation of the health information exchange and health
8 information exchange services.

9 *h.* Adopt rules for monitoring and enforcement of,
10 and sanctions for actions including but not limited to
11 noncompliance with health information exchange standards,
12 requirements, policies, and procedures; and violation of
13 applicable laws.

14 *i.* Have all remedies allowed by law to address any violation
15 of the terms of the participation and data sharing agreement.

16 *j.* Perform any and all other activities in furtherance of
17 its purpose.

18 7. *a.* A board member is subject to chapter 68B, the rules
19 adopted by the Iowa ethics and campaign disclosure board, and
20 the ethics rules and requirements that apply to the executive
21 branch of state government.

22 *b.* A board member shall not participate in any matter
23 before the board in which the board member has a direct or
24 indirect interest in an undertaking that places the board
25 member's personal or business interests in conflict with those
26 of Iowa e-health, including but not limited to an interest in
27 a procurement contract, or that may create the appearance of
28 impropriety.

29 8. *Advisory council.*

30 *a.* An advisory council to the board is established
31 to provide an additional mechanism for obtaining broader
32 stakeholder advice and input regarding health information
33 technology, the health information exchange, and health
34 information exchange services.

35 *b.* The members of the advisory council shall be appointed

1 by the board for two-year staggered terms and shall include a
2 representative of all of the following:

- 3 (1) The state board of health.
- 4 (2) Informaticists.
- 5 (3) Academics.
- 6 (4) The Iowa Medicare quality improvement organization.
- 7 (5) The state chief information officer.
- 8 (6) The private telecommunications industry.
- 9 (7) The Iowa collaborative safety net provider network.
- 10 (8) The department of human services.
- 11 (9) Des Moines university.
- 12 (10) The Iowa health care collaborative.
- 13 (11) The department of veterans affairs.
- 14 (12) Consumers.
- 15 (13) Home health care providers.
- 16 (14) Long-term care providers.
- 17 (15) The state hygienic laboratory.

18 *c.* The board may change the membership and the composition
19 of the advisory council, by rule, to accommodate changes in
20 stakeholder interests and the evolution of health information
21 technology, the health information exchange, and health
22 information exchange services.

23 *d.* Advisory council members shall be entitled to
24 reimbursement for actual and necessary expenses incurred in the
25 performance of their official duties as members in accordance
26 with state rules and guidelines.

27 **Sec. 5. NEW SECTION. 135D.5 Business and technical**
28 **operations — office of health information technology.**

29 1. The office of health information technology is
30 established within the department and shall be responsible for
31 the day-to-day business and operations of Iowa e-health, the
32 health information exchange, and health information exchange
33 services. The office shall be under the direction of the
34 director and under the supervision of the deputy director.

35 2. *a.* The department shall employ an executive director to

1 manage the office and who shall report to the deputy director.

2 *b.* The executive director shall manage the planning and
3 implementation of Iowa e-health, the health information
4 exchange, and health information exchange services, and provide
5 high-level coordination across public and private sector
6 stakeholders.

7 *c.* The executive director shall serve as Iowa's health
8 information technology coordinator and primary point of
9 contact for the office of the national coordinator for health
10 information technology, other federal and state agencies
11 involved in health information technology, and state health
12 information technology coordinators from other states.

13 3. *a.* The executive director and all other employees of
14 the office shall be employees of the state, classified and
15 compensated in accordance with chapter 8A, subchapter IV, and
16 chapter 20.

17 *b.* Subject to approval of the board, the director shall
18 have the sole power to determine the number of full-time and
19 part-time equivalent positions necessary to carry out the
20 provisions of this chapter.

21 *c.* An employee of the office shall not have a financial
22 interest in any vendor doing business or proposing to do
23 business with Iowa e-health.

24 4. The department shall do all of the following:

25 *a.* Develop, implement, and enforce the following, as
26 approved by the board:

27 (1) Strategic, operational, and financial sustainability
28 plans for the health information exchange, Iowa e-health, and
29 health information exchange services.

30 (2) Standards, requirements, policies, and procedures for
31 access, use, secondary use, and privacy and security of health
32 information exchanged through the health information exchange,
33 consistent with applicable federal and state standards and
34 laws.

35 (3) Policies and procedures for monitoring participant

1 usage of the health information exchange and health information
2 exchange services; enforcing noncompliance with health
3 information exchange standards, requirements, policies,
4 procedures, and violations of applicable law; and imposing
5 sanctions.

6 (4) Policies and procedures for administering the
7 infrastructure, technology, and associated professional
8 services required for operation of the health information
9 exchange and health information exchange services.

10 (5) Policies and procedures for evaluation of the health
11 information exchange and health information exchange services.

12 (6) A mechanism for periodic review and update of policies
13 and procedures.

14 (7) An annual budget and fiscal report for the business
15 and technical operations of the health information exchange
16 and an annual report for Iowa e-health, the health information
17 exchange, and health information exchange services.

18 *b.* Convene and facilitate board, advisory council,
19 workgroup, committee, and other stakeholder meetings.

20 *c.* Provide technical and operational assistance for
21 planning and implementing Iowa e-health activities, the health
22 information exchange, and health information exchange services.

23 *d.* Provide human resource, budgeting, project and
24 activity coordination, and related management functions to
25 Iowa e-health, the health information exchange, and health
26 information exchange services.

27 *e.* Develop educational materials and educate the general
28 public on the benefits of electronic health records, the health
29 information exchange, and the safeguards available to prevent
30 unauthorized disclosure of health information.

31 *f.* Enter into participation and data sharing agreements with
32 participants of the health information exchange.

33 *g.* Administer and enforce the collection of fees, charges,
34 costs, and expenses for the health information exchange and
35 health information exchange services.

1 *h.* Record receipts and approval of payments, and file
2 required financial reports.

3 *i.* Apply for, acquire by gift or purchase, and hold,
4 dispense, or dispose of funds and real or personal property
5 from any person, governmental entity, or organization in
6 the exercise of its powers and performance of its duties in
7 accordance with this chapter.

8 *j.* Administer grant funds in accordance with the terms of
9 the grant and all applicable state and federal laws, rules, and
10 regulations.

11 *k.* Select and contract with vendors in compliance with
12 applicable state and federal procurement laws and regulations.

13 *l.* Coordinate with other health information technology and
14 health information exchange programs and activities.

15 *m.* Work to align interstate and intrastate interoperability
16 and standards in accordance with national health information
17 exchange standards.

18 *n.* Execute all instruments necessary or incidental to the
19 performance of its duties and the execution of its powers.

20 Sec. 6. NEW SECTION. 135D.6 Iowa e-health finance fund.

21 1. The Iowa e-health finance fund is created as a separate
22 fund within the state treasury under the control of the board.
23 Fees collected or revenues arising from the operation and
24 administration of the health information exchange and health
25 information exchange services, including but not limited to
26 fees and charges for participants of the health information
27 exchange, donations, gifts, interest, or other moneys, shall be
28 deposited into the fund. Funds generated from fees collected
29 and revenues generated from the health information exchange
30 shall be used to establish, operate, and sustain the health
31 information exchange and health information exchange services.

32 2. Moneys in the fund shall be expended by the department
33 only on activities and operations suitable to the performance
34 of the department's duties on behalf of the board and Iowa
35 e-health as specified in this chapter, subject to board

1 approval. Disbursements may be made from the fund for purposes
2 related to the administration, management, operations,
3 functions, activities, and sustainability of the health
4 information exchange and health information exchange services.

5 3. Notwithstanding section 12C.7, subsection 2, earnings or
6 interest on moneys deposited in the fund shall be credited to
7 the fund. Notwithstanding section 8.33, any unexpended balance
8 in the fund at the end of each fiscal year shall be retained in
9 the fund and shall not be transferred to the general fund of
10 the state.

11 4. The moneys in the fund shall be subject to financial and
12 compliance audits by the auditor of state.

13 5. The general assembly may appropriate moneys in the fund
14 to the department on behalf of Iowa e-health for the health
15 information exchange and health information exchange services.

16 Sec. 7. NEW SECTION. 135D.7 **Technical infrastructure.**

17 1. The health information exchange shall provide a
18 mechanism to facilitate and support the secure electronic
19 exchange of health information between participants. The
20 health information exchange shall not function as a central
21 repository of all health information.

22 2. The health information exchange shall provide a
23 mechanism for participants without an electronic health record
24 system to access health information from the health information
25 exchange.

26 3. The technical infrastructure of the health information
27 exchange shall be designed to facilitate the secure electronic
28 exchange of health information using functions including but
29 not limited to all of the following:

30 a. A master patient index, in the absence of a single,
31 standardized patient identifier, to exchange secure health
32 information among participants.

33 b. A record locator service to locate and exchange secure
34 health information among participants.

35 c. Authorization, authentication, access, and auditing

1 processes for security controls to protect the privacy of
2 consumers and participants and the confidentiality of health
3 information by limiting access to the health information
4 exchange and health information to participants whose identity
5 has been authenticated, and whose access to health information
6 is limited by their role and recorded through an audit trail.

7 *d.* Electronic transmission procedures and software necessary
8 to facilitate the electronic exchange of various types of
9 health information through the health information exchange.

10 *e.* Telecommunications through coordination of public
11 and private networks to provide the backbone infrastructure
12 to connect participants exchanging health information. The
13 networks may include but are not limited to the state-owned
14 communications network, other fiber optic networks, and private
15 telecommunications service providers.

16 4. The state shall own or possess the rights to use all
17 processes and software developed, and hardware installed,
18 leased, designed, or purchased for the health information
19 exchange, and shall permit participants to use the health
20 information exchange and health information exchange services
21 in accordance with the standards, policies, procedures, rules,
22 and regulations approved by the board, and the terms of the
23 participation and data sharing agreement.

24 **Sec. 8. NEW SECTION. 135D.8 Legal and policy.**

25 1. Upon approval from the board, the office of health
26 information technology shall establish appropriate security
27 standards, policies, and procedures to protect the transmission
28 and receipt of individually identifiable health information
29 exchanged through the health information exchange. The
30 security standards, policies, and procedures shall, at a
31 minimum, comply with the Health Insurance Portability and
32 Accountability Act security rule pursuant to 45 C.F.R. pt. 164,
33 subpt. C, and shall reflect all of the following:

34 *a.* Include authorization controls, including the
35 responsibility to authorize, maintain, and terminate a

1 participant's use of the health information exchange.

2 *b.* Require authentication controls to verify the identity
3 and role of the participant using the health information
4 exchange.

5 *c.* Include role-based access controls to restrict
6 functionality and information available through the health
7 information exchange.

8 *d.* Include a secure and traceable electronic audit system
9 to document and monitor the sender and the recipient of health
10 information exchanged through the health information exchange.

11 *e.* Require standard participation and data sharing
12 agreements which define the minimum privacy and security
13 obligations of all participants using the health information
14 exchange and health information exchange services.

15 *f.* Include controls over access to and the collection,
16 organization, and maintenance of records and data for
17 purposes of research or population health that protect the
18 confidentiality of consumers who are the subject of the health
19 information.

20 2. *a.* A patient shall have the opportunity to decline
21 exchange of their health information through the health
22 information exchange. The board shall provide by rule the
23 means and process by which patients may decline participation.

24 *b.* Unless otherwise authorized by law or rule, a patient's
25 decision to decline participation means that none of the
26 patient's health information shall be exchanged through the
27 health information exchange. If a patient does not decline
28 participation, the patient's health information may be
29 exchanged through the health information exchange except as
30 follows:

31 (1) If health information associated with a patient
32 visit with a provider is protected by state law that is
33 more restrictive than the Health Insurance Portability and
34 Accountability Act, a patient shall have the right to decline
35 sharing of health information through the health information

1 exchange from such visit as provided by rule.

2 (2) With the consent of the patient, a provider may
3 limit health information associated with a patient visit
4 from being shared through the health information exchange if
5 such limitation is reasonably determined by the provider, in
6 consultation with the patient, to be in the best interest of
7 the patient as provided by rule.

8 c. A patient who declines participation in the health
9 information exchange may later decide to have health
10 information shared through the health information exchange. A
11 patient who is participating in the health information exchange
12 may later decline participation in the health information
13 exchange.

14 3. The office shall develop and distribute educational
15 tools and information for consumers, patients, and providers to
16 inform them about the health information exchange, including
17 but not limited to the safeguards available to prevent
18 unauthorized disclosure of health information and a patient's
19 right to decline participation in the health information
20 exchange.

21 4. a. A participant shall not release or use protected
22 health information exchanged through the health information
23 exchange for purposes unrelated to prevention, treatment,
24 payment, or health care operations unless otherwise authorized
25 or required by law. Participants shall limit the use and
26 disclosure of protected health information to the minimum
27 amount required to accomplish the intended purpose of the use
28 or request, in compliance with the Health Insurance Portability
29 and Accountability Act and other applicable federal law. Use
30 or distribution of the information for a marketing purpose, as
31 defined by the Health Insurance Portability and Accountability
32 Act, is strictly prohibited.

33 b. The department, the office, and all persons using the
34 health information exchange shall be individually responsible
35 for following breach notification policies as provided by the

1 Health Insurance Portability and Accountability Act.

2 *c.* A provider shall not be compelled by subpoena, court
3 order, or other process of law to access health information
4 through the health information exchange in order to gather
5 records or information not created by the provider.

6 5. *a.* If a patient has declined participation in the health
7 information exchange, the patient's health information may be
8 released to a provider through the health information exchange
9 if all of the following circumstances exist:

10 (1) The patient is unable to provide consent due to
11 incapacitation.

12 (2) The requesting provider believes, in good faith, that
13 the information is necessary to prevent imminent serious injury
14 to the patient. Imminent serious injury includes but it not
15 limited to death, injury or disease that creates a substantial
16 risk of death, or injury or disease that causes protracted loss
17 or impairment of any organ or body system.

18 (3) Such information cannot otherwise be readily obtained.

19 *b.* The department shall provide by rule for the reporting of
20 emergency access and use by a provider.

21 6. All participants exchanging health information and
22 data through the health information exchange shall grant to
23 participants of the health information exchange a nonexclusive
24 license to retrieve and use that information or data in
25 accordance with applicable state and federal laws, and the
26 policies, procedures, and rules established by the board.

27 7. The department shall establish by rule the procedures for
28 a patient who is the subject of health information to do all of
29 the following:

30 *a.* Receive notice of a violation of the confidentiality
31 provisions required under this chapter.

32 *b.* Upon request to the department, view an audit report
33 created under this chapter for the purpose of monitoring access
34 to the patient's records.

35 8. *a.* A provider who relies in good faith upon any health

1 information provided through the health information exchange in
2 treatment of a patient shall be immune from criminal or civil
3 liability arising from any damages caused by such good faith
4 reliance. Such immunity shall not apply to acts or omissions
5 constituting gross negligence, recklessness, or intentional
6 misconduct.

7 *b.* A participant that has disclosed health information
8 through the health information exchange in compliance with
9 applicable law and the standards, requirements, policies,
10 procedures, and agreements of the health information exchange
11 shall not be subject to criminal or civil liability for the use
12 or disclosure of the health information by another participant.

13 9. *a.* Notwithstanding chapter 22, the following records
14 shall be kept confidential, unless otherwise ordered by a court
15 or consented to by the patient or by a person duly authorized
16 to release such information:

17 (1) The protected health information contained in, stored
18 in, submitted to, transferred or exchanged by, or released from
19 the health information exchange.

20 (2) Any protected health information in the possession of
21 Iowa e-health or the department due to its administration of
22 the health information exchange.

23 *b.* Unless otherwise provided in this chapter, when using
24 the health information exchange for the purpose of patient
25 treatment, a provider is exempt from any other state law that
26 is more restrictive than the Health Insurance Portability and
27 Accountability Act that would otherwise prevent or hinder the
28 exchange of patient information by the patient's providers.

29 **Sec. 9. NEW SECTION. 135D.9 Iowa e-health — health**
30 **information exchange services.**

31 Iowa e-health shall facilitate services through the health
32 information exchange or through other marketplace mechanisms
33 to improve the quality, safety, and efficiency of health care
34 available to consumers. These services shall include but are
35 not limited to all of the following:

1 1. Patient summary records such as continuity of care
2 documents.

3 2. A provider directory and provider messaging.

4 3. Clinical orders and results.

5 4. Public health reporting such as electronic reporting to
6 the statewide immunization registry and reportable diseases.

7 5. Medication history.

8 Sec. 10. NEW SECTION. 135D.10 **Governance review and**
9 **transition.**

10 1. *a.* The Iowa e-health governance structure shall
11 continue during the term of the state health information
12 exchange cooperative agreement with the office of the national
13 coordinator for health information technology to address
14 the development of policies and procedures; dissemination
15 of interoperability standards; the initiation, testing, and
16 operation of the health information exchange infrastructure;
17 and the evolution of health information exchange services to
18 improve patient care for the population.

19 *b.* During the final year of the term of the cooperative
20 agreement, the board and the department shall review the
21 Iowa e-health governance structure, operations of the health
22 information exchange, and the business and sustainability plan
23 to determine if the existing Iowa e-health governance structure
24 should continue or should be replaced by any of the following:

25 (1) A public authority or similar body with broad
26 stakeholder representation on its governing board.

27 (2) A not-for-profit entity with broad stakeholder
28 representation on its governing board.

29 2. If the board and department determine that the governance
30 structure should be replaced, Iowa e-health shall develop
31 a transition plan to transfer the responsibilities for the
32 domains specified in section 135D.3.

33 Sec. 11. Section 136.3, subsection 14, Code 2011, is amended
34 to read as follows:

35 14. Perform those duties authorized pursuant to sections

1 ~~135.156~~, 135.159, and 135.161, and other provisions of law.

2 Sec. 12. Section 249J.14, subsection 2, paragraphs a and b,
3 Code 2011, are amended to read as follows:

4 a. Design and implement a program for distribution
5 and monitoring of provider incentive payments, including
6 development of a definition of "*meaningful use*" for purposes
7 of promoting the use of electronic medical recordkeeping by
8 providers. The department shall develop this program in
9 collaboration with the department of public health and the
10 ~~electronic health information advisory council and executive~~
11 ~~committee~~ board of directors and the advisory council to the
12 board of Iowa e-health created pursuant to section ~~135.156~~
13 135D.4.

14 b. Develop the medical assistance health information
15 technology plan as required by the centers for Medicare and
16 Medicaid services of the United States department of health and
17 human services. The plan shall provide detailed implementation
18 plans for the medical assistance program for promotion of the
19 adoption and meaningful use of health information technology by
20 medical assistance providers and the Iowa Medicaid enterprise.
21 The plan shall include the integration of health information
22 technology and health information exchange with the medical
23 assistance management information system. The plan shall be
24 developed in collaboration with the department of public health
25 and the ~~electronic health information advisory council and~~
26 ~~executive committee~~ board of directors and the advisory council
27 to the board of Iowa e-health created pursuant to section
28 ~~135.156~~ 135D.4.

29 Sec. 13. INITIAL APPOINTMENTS — BOARD.

30 1. The initial appointments of board member positions
31 described in section 135D.4, as enacted by this Act, shall have
32 staggered terms as follows:

33 a. The three board members appointed by the governor shall
34 have an initial term of two years, after which the members
35 shall serve four-year terms, subject to the following:

1 (1) The terms shall begin and end as provided in section
2 69.19.

3 (2) Board members appointed by the governor when the senate
4 is not in session shall serve only until the end of the next
5 regular session of the general assembly, unless and until
6 confirmed by the senate.

7 b. The board member designated by the Iowa pharmacy
8 association and the at-large board member, if appointed by the
9 board, shall have initial terms of two years, after which the
10 members shall serve four-year terms.

11 c. The board members designated by the Iowa hospital
12 association, the Iowa medical society, the Iowa osteopathic
13 medical association, the Iowa nurses association, the Iowa
14 collaborative safety net provider network, and the Iowa
15 behavioral health association shall have initial terms of four
16 years, after which the members shall serve four-year terms.

17 d. The board members designated by the federation of Iowa
18 insurers shall serve initial terms of six years, after which
19 the members shall serve four-year terms.

20 2. With the exception of members not subject to term limits
21 as provided in section 135D.4, board members may serve an
22 additional four-year term, with the exception of those board
23 members initially serving a two-year term, who may serve two
24 consecutive four-year terms following the initial two-year
25 term.

26 Sec. 14. REPEAL. Sections 135.154, 135.155, and 135.156,
27 Code 2011, are repealed.

28 Sec. 15. TRANSITION PROVISIONS. Notwithstanding any other
29 provision of this Act, the department of public health, and the
30 executive committee and the advisory council created pursuant
31 to section 135.156, shall continue to exercise the powers
32 and duties specified under that section until such time as
33 all board members have been appointed as provided in section
34 135D.4, as enacted by this Act.

35 Sec. 16. EFFECTIVE DATE. The sections of this Act repealing

1 sections 135.154, 135.155, and 135.156, and amending sections
2 136.3 and 249J.14, take effect on the date all board members
3 are appointed as provided in section 135D.4, as enacted by this
4 Act. The department of public health shall notify the Code
5 editor of such date.

6 Sec. 17. EFFECTIVE UPON ENACTMENT. Except as otherwise
7 provided in this Act, this Act, being deemed of immediate
8 importance, takes effect upon enactment.

9 EXPLANATION

10 This bill relates to health information technology. The
11 bill provides legislative intent and findings and definitions
12 for the new Code chapter 135D.

13 The bill provides for the establishment of Iowa e-health
14 as a public-private, multi-stakeholder collaborative to
15 develop, administer, and sustain an exclusive statewide health
16 information exchange; provides principles and goals of Iowa
17 e-health; and describes the five domains that provide for the
18 structuring of Iowa e-health.

19 The bill provides for the governance of Iowa e-health.
20 The bill establishes a board of directors representing
21 consumers, business, health care provider associations and
22 providers, payers, and state government. The bill provides
23 for appointment of members, terms of service, restrictions
24 for membership, powers of the board, board meetings, and
25 provisions relating to ethics and conflicts of interest. The
26 bill also directs the board to appoint an advisory council,
27 specifies the membership of the advisory council, and allows
28 the board to change the number and composition of the members
29 of the advisory council by rule based upon the changes in
30 and evolution of health information technology, the health
31 information exchange, and the services provided.

32 The bill provides for the establishment of an office of
33 health information technology in the department of public
34 health, provides that the office is to be managed by an
35 executive director, and specifies the duties of the department

1 relative to the office.

2 The bill creates an Iowa e-health finance fund within
3 the state treasury, under the control of the board. All
4 fees collected or revenues arising from the operation and
5 administration of the health information exchange and its
6 services are to be deposited into the fund and the funds
7 are to be used to establish, operate, and sustain the health
8 information exchange and its services.

9 The bill specifies the technical infrastructure of the
10 health information exchange to be designed to facilitate the
11 secure electronic exchange of health information. The bill
12 provides that the state has ownership or possesses the rights
13 to use all processes and software developed, and hardware
14 installed, designed, leased, or purchased for the health
15 information exchange.

16 The bill directs the office, with approval from the board,
17 to establish appropriate security standards, policies,
18 and procedures to protect the transmission and receipt
19 of individually identifiable health information exchanged
20 through the health information exchange and provides that each
21 patient may choose to decline participation in the health
22 information exchange, but may later choose to participate
23 or, if the patient initially participates, may later decline
24 to participate. The bill provides that participants shall
25 grant to participants of the health information exchange a
26 nonexclusive license to retrieve and use that information and
27 data in accordance with applicable laws, rules, regulations,
28 and policies.

29 The bill provides for immunity from civil and criminal
30 liability arising from any damages caused by good faith
31 reliance on health information provided through the health
32 information exchange, but does not protect the provider from
33 acts or omissions constituting gross negligence, recklessness,
34 or intentional misconduct. A participant who discloses
35 health information through the health information exchange

1 in compliance with laws, rules, regulations, policies, and
2 agreements is not subject to criminal or civil liability for
3 the use or disclosure of the health information by another
4 participant.

5 The bill provides for sharing of information in accordance
6 with other laws, including Code chapter 22 (open records) and
7 the federal Health Insurance Portability and Accountability
8 Act. The bill provides for governance review and consideration
9 of the transition of the governing body during the final year
10 of the term of the cooperative agreement with the office of
11 the national coordinator for health information technology and
12 directs the board to adopt rules for implementing the Code
13 chapter.

14 The bill provides for initial staggered-term appointments
15 to the board.

16 The bill takes effect upon enactment, but provides that the
17 executive committee and advisory council for health information
18 technology existing under current law are to continue until
19 all board members are appointed for Iowa e-health. The bill
20 repeals the current law when all board members are appointed
21 and directs the department to notify the Code editor of the
22 date of repeal.